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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: HELENA, MT Date: SEP 16 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT: [redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The waiver application was denied by the District Director, Helena, Montana. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and she is the beneficiary of a petition for alien relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See District Director Decision,* dated June 27, 2001.

On appeal, counsel asserts that the Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services, "BCIS") did not warn the applicant of any future inadmissibility consequences when she was granted advance parole. Counsel asserts that as a result, the INS should be estopped from finding the applicant inadmissible, or in the alternative, that the INS should apply a liberal extreme hardship standard in the applicant's case. Counsel asserts further that the applicant's husband (Mr. Nava) will suffer emotional and financial hardship if the applicant is not granted a waiver of inadmissibility

Counsel indicates that the INS warning that the applicant received stated:

> Subject is traveling abroad for emergent reasons, under the purview of O.I. 212.5(c)(3). Subject may be paroled for humanitarian reasons, for one (1) year, upon application for reentry to the United States. This authorization will permit you to resume your application for adjustment of status on your return to the United States.

A review of the evidence in the record indicates that counsel misquoted the warning provision that was issued to the applicant. The record reflects that the warning issued to the applicant clearly stated that:

> If, after April 1, 1997, you were unlawfully present in the United States for more than 180

> days before applying for adjustment of status, you may be found inadmissible under section 212(a)(9)(B)(i) of the Act when you return to the United States to resume the processing of your application.

See Form I-512, Authorization for Parole of an Alien (Form I-512) into the United States, dated April 5, 2000.

The record reflects that the applicant accrued unlawful presence from April 30, 1997 until July 23, 1998. She thus accrued unlawful presence in excess of 180 days. Moreover, the wording of the Form I-512 clearly stated that in a situation such as the applicant's, the applicant could be found inadmissible under section 212(a)(9)(B)(i) of the Act.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
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> (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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> . . . .
>
> (v) Waiver. - The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In an affidavit written June 30, 2000, the applicant stated that she was unaware of the inadmissibility consequences of her departure from the United States and that her husband and U.S. citizen children would suffer extreme hardship if she had to return to Mexico and they continued living in this country. The applicant provided no other details or information regarding the hardship her husband and family

would suffer.

Counsel additionally asserted that [redacted] and the applicant's children are used to the U.S. culture, that economic conditions are difficult in Mexico, and that [redacted] and the applicant have no way to support themselves or their children if they return to Mexico. Counsel also asserted that [redacted] currently has a job which allows him to provide for his family and that if he and the children remained in the U.S. the separation from the applicant would cause extreme emotional and financial harm. Counsel submitted no independent evidence to support his assertions.

As stated above, section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(1I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident ***spouse or parent.*** Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. The claims pertaining to hardship to the applicant's children will thus not be considered.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed to be relevant in determining whether an alien had established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

There are no health concerns in this case, and the record contains no evidence regarding [redacted] family ties in and outside of the United States. Moreover, aside from conclusionary statements made by counsel and the applicant, the record contains no detailed information or evidence to support the contention that [redacted] would suffer extreme emotional or financial hardship if the applicant's waiver request is not granted.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of

deportation and did not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The court then reemphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if her waiver of inadmissibility is not granted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.